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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,652	04/02/2004	Matthew K. Parker		9667

42054 7590 02/11/2005

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EXAMINER	
BOCHNA, DAVID	

ART UNIT	PAPER NUMBER
3679	

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/816,652	PARKER, MATTHEW K.	
	Examiner	Art Unit	
	David E. Bochna	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-11 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 6 and 11 are objected to because of the following informalities: These claims are missing a period at the end of the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> *The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.*

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 4, 9 contain more than one sentence.

Claims 7 and 8 are incomplete sentences, it is unclear what component is without the top or bottom angle.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Shetterly.

In regard to claim 1, Shetterly discloses a shield 10 for wall penetration of flexible tubing, wiring, or cabling comprising:

A square sleeve 10 of sufficient strength to resist deformation due to manually applied pressure,

The sleeve being of predetermined length sufficient to penetrate an exterior frame wall through any exterior sheathing and building siding,

The sleeve being of predetermined inside dimensions to accommodate one or more wires, cables, or flexible tubing,

An attachment plate 23 of sufficient strength to resist deformation due to manually applied pressure,

The attachment plate having one or more attachment holes for installation of hardware,

The sleeve bonded to the attachment plate at an angle (plate is set at an angle to surface 22.

In regard to claim 2, the attachment plate and sleeve are constructed of metal.

6. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Lindsey.

In regard to claim 1, Shetterly discloses a shield for wall penetration of flexible tubing, wiring, or cabling comprising:

A square sleeve 30 of sufficient strength to resist deformation due to manually applied pressure,

The sleeve being of predetermined length sufficient to penetrate an exterior frame wall through any exterior sheathing and building siding,

The sleeve being of predetermined inside dimensions to accommodate one or more wires, cables, or flexible tubing,

An attachment plate 8 of sufficient strength to resist deformation due to manually applied pressure,

The attachment plate having one or more attachment holes 10 for installation of hardware,

The sleeve bonded to the attachment plate at an angle (a ninety degree angle).

In regard to claim 3, the attachment plate and sleeve are constructed of plastic.

7. Claims 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by McLaughlin.

In regard to claim 4, McLaughlin discloses a shield for wall penetration of flexible tubing, wiring, or cabling comprising:

A square sleeve B of sufficient strength to resist deformation due to manually applied pressure,

The sleeve being of predetermined length sufficient to penetrate an exterior frame wall through any exterior sheathing and building siding,

The sleeve being of predetermined inside dimensions to accommodate one or more wires, cables, or flexible tubing,

two attachment angles d of sufficient strength to resist deformation due to manually applied pressure,

one of the attachment angles bonded to the top of the sleeve (top d in fig. 1 or 5) and the other attachment angle bonded to the midsection (bottom angle d is attached midway between the flange ends b, see fig. 2) of the opposite side (opposite sides bordered by flanges b) of the sleeve,

The attachment angles having one or more attachment holes for installation of hardware,

The sleeve bonded to the attachment angles at an angle.

In regard to claim 5, the attachment angles and sleeve are constructed of metal.

8. Claims 4 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Trachtenberg.

In regard to claims 4 and 9, Trachtenberg discloses a shield for wall penetration of flexible tubing, wiring, or cabling comprising:

A square sleeve 10 of sufficient strength to resist deformation due to manually applied pressure,

The sleeve being of predetermined length sufficient to penetrate an exterior frame wall through any exterior sheathing and building siding,

The sleeve being of predetermined inside dimensions to accommodate one or more wires, cables, or flexible tubing,

two attachment angles 14 of sufficient strength to resist deformation due to manually applied pressure,

one of the attachment angles 14 bonded to the top of the sleeve and the other attachment angle bonded to the midsection of the opposite side of the sleeve (bottom angle 14 is bonded by clips 22 to the midsection of the bottom edge of the sleeve 10, see fig. 1),

The attachment angles having one or more attachment holes for installation of hardware,

The sleeve bonded to the attachment angles at an angle.

In regard to claims 7-8, without the top and bottom angle.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 5-6 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trachtenberg.

Trachtenberg discloses a shield as described above, but does not disclose that the angle and sleeve are made of either all plastic or all metal. However, it would have been obvious to make the sleeve and angle out of either plastic or metal because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

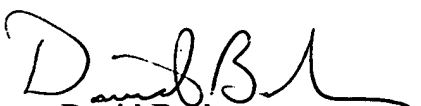
Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mollick et al., Arguijo et al., Fingler et al., Maier, Martin, Sr., and Japanese patent 4,355,619 all disclose similar sleeves common in the art.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Bochna whose telephone number is (703) 306-9040. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



David Bochna
Primary Examiner
Art Unit 3679
February 3, 2005